



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 19-02461  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

The presence of close personal relationships in the People’s Republic of China (China) presents a heightened risk of manipulation or inducement to act in a way inconsistent with U.S. interests. The security concerns raised by Applicant’s ties to family members residing in, and who are citizens of, China are not mitigated. His request for a security clearance is denied.

**Statement of the Case**

On June 16, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security

clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 28, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns articulated in the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Specifically, this case is governed by Guideline B (Foreign Influence).

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on December 4, 2019, and convened the requested hearing on January 28, 2020. Department Counsel proffered Government Exhibits (GX) 1 and 2. Appellant appeared as scheduled, testified, and proffered Applicant's Exhibits A and B. All exhibits were admitted without objection. Department Counsel also submitted three administrative exhibits included in the record as Hearing Exhibit (HX) 1 (Index of Government Exhibits, one page), HX 2 (Department Counsel Discovery Letter, dated November 27, 2019, two pages), and HX 3 (Department Counsel's Request for Administrative Notice re People's Republic of China, dated December 26, 2019 (11 pages)). With HX 3, Department Counsel included 22 exhibits (Items I – XXII) in support of the request for administrative notice. I received a transcript of the hearing (Tr.) on February 6, 2020.

### **Findings of Fact**

In the SOR, the Government alleged that Applicant's father is a citizen and resident of China who works there as a police officer (SOR 1.a), and that his step-mother (SOR 1.b) and half-sister (SOR 1.c) are citizens and residents of China. It was also alleged that Applicant maintains contact with his cousin, who is a citizen and resident of China and served in the Chinese military (SOR 1.d). Finally, it was alleged that Applicant maintains contact with an uncle and two aunts, one of whom works for the Chinese government, who are citizens and residents of China (SOR 1.e).

In response to the SOR, Applicant admitted without explanation all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 24 years old and employed as an engineer for a large defense contractor. He was born in China, immigrated to the United States in 2008, and became a U.S. citizen in 2014. His parents, both native-born Chinese citizens, divorced in 2007. His mother subsequently married an American, now Applicant's stepfather, whom she met when he was on vacation in China. Applicant and his mother subsequently moved to the United States where Applicant completed his middle and high school education. Applicant went on to earn an associate's degree at a community college. Thereafter, he enrolled in a state university where he earned a bachelor's degree with two engineering majors in 2017. In 2019, he earned a master's degree in engineering. He began working

for his current employer during his last semester in college as an engineering intern, before being hired in May 2017 as a full-time employee. (GX 1; GX 2; Tr. 14, 32 – 33)

Applicant is single and lives with other single professionals his age. He owns a 14-year-old used car and earns about \$70,000 annually. He has about \$22,000 saved in a retirement savings account. He has no assets or other interests in China or any other foreign country. His father in China helped pay for about 30 percent of Applicant's education. The rest was funded by his mother and American stepfather. (GX 1; GX 2; Tr. 32 – 34, 48 – 50)

Applicant's father has lived in China his entire life. He served in the Chinese People's Liberation Army (PLA) for about 15 years before transitioning to his current job as a civilian police officer in one of China's southern provinces. He has worked as a policeman since about 2007. Applicant's father has remarried and now has an 11-year-old daughter (Applicant's half-sister). Applicant's Chinese stepmother owns a private company that manufactures batteries for electric cars. (GX 1; GX 2; Tr. 32, 37, 56 – 57)

Applicant maintains close and continuing contact with his father in China. Most of their communication takes place weekly via text. He last visited his father for about a month in December 2016 and January 2017. Before then, he visited his father and other family members in China for about six weeks in May and June 2015. He hopes to visit his father in the future, but he understands that if he holds a clearance such travel would raise additional security concerns. (GX 1; Tr. 41 – 46, 59 – 60)

Applicant also maintains regular contact with two aunts and one uncle who are Chinese citizens and reside in China. One of his aunts (his mother's sister) works for the Chinese government's provincial agricultural commission. Applicant speaks or electronically messages with her about four times annually. Applicant also stays in regular contact a cousin, the son of the aforementioned maternal aunt, whom Applicant regards as a brother because they are about the same age. He and his cousin communicate by text about once each month. His cousin served in the PLA as part of a two-year compulsory service obligation. While in the Chinese military, Applicant's cousin served in a forestry division. He now works at the factory owned by Applicant's stepmother. (GX 1; Tr. 37 – 39)

Applicant's other aunt, his father's sister, and his uncle (by marriage to this aunt) work for the Chinese government's forestry and water commission. Applicant has electronic contact with them about four times annually. Applicant last saw his aunts, his uncle, and his cousin, as well as other family members with whom he has no contact, when he visited his father in early 2017. His last contact with any family member other than his father was in mid-2019. He last spoke with his father in late January 2020. (GX 1; Tr. 39 – 41)

To properly assess the security significance of these facts within the adjudicative guideline at issue, I have taken administrative notice of certain facts regarding China.

China is an increasingly industrialized world economic and military power. The country has a population in excess of one billion people who are governed by an authoritarian, Communist regime. Geographically vast and demographically diverse, the country has significant natural resources to help support its growing economy. China devotes most of its industry and domestic production to its military forces, and it has a strategic nuclear arsenal. China is in direct competition with the United States in many geopolitical and economic areas, and it is known to actively collect military, economic and industrial information about the United States. In addition to being the leading threat to the security of U.S. technology, China of late has emerged as a persistent cyber espionage threat to U.S. military and critical infrastructure systems. Much of that activity is conducted through the auspices of the PLA. (Hx. 3, Items I - V)

China and the U.S. also are major trading partners and share other common interests. For example, the two countries have worked closely on regional issues, especially those involving North Korea. However, China is one of the most active collectors of U.S. defense information and technology, as evidenced by multiple federal prosecutions of U.S. citizens attempting to act illegally on behalf of the Chinese government in the United States. Further, the Chinese government has an abysmal human rights record. Officials continue to engage in suppression of personal and electronic expressions of political dissent. Arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment are commonplace. Government and law enforcement practices are largely unchecked by any independent judicial review. Most recently, the central Chinese government has begun to exert a repressive influence in Hong Kong, a historically open society. (Hx. 3, Item I, VII)

Applicant is loyal to the United States and unequivocally favors western democratic government, with its system of individual liberties and freedom of speech, over the repressive, authoritarian regime in China. He testified that if any of his family members were ever put under duress to leverage Applicant's access to classified information, he would contact his employer's security organization. Applicant also presented information showing that his life is one of total immersion in personal and professional interests in United States. Applicant was a good student of whom his father, mother, and stepmother are rightfully proud. He is assumed to be a good employee, and he has a variety of personal interests that are typical of any American citizen his age. (AX A; AX B; Tr. 58 – 60)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See *Egan*; AG ¶ 2(b))

## **Analysis**

### **Foreign Influence**

The security concern under this guideline is stated at AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is

known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has continuing relationships with his father, his stepmother, his father's sister and her husband, their son, and his mother's sister. Although he has not seen any of those relatives in three years, he is in regular electronic contact with them. He and his father last communicated less than a week before the hearing. All of these relationships are, by definition, close even if the nature of their communications may often be casual. Combined with information about China and its relationship with the United States that is not reasonably subject to dispute, the record evidence as a whole requires application of the disqualifying condition at AG ¶ 7(a):

contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

By contrast, I have considered the following pertinent AG ¶ 8 mitigating conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Nonetheless, I conclude none of these factors can be applied here. Applicant's relationships are not casual and his communications with them are not infrequent. Although Applicant's sense of loyalty to the United States and his ties in this country are significant, that information is not sufficient to outweigh the heightened risk of coercion presented by the Chinese government. The security concerns about foreign influence are not mitigated.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). It cannot be disputed that Applicant is a loyal American citizen, and that he lives a

typically American lifestyle in all facets of his life. On its face, the fact that Applicant has relatives in China is perfectly normal and would not warrant any unusual scrutiny. In the context of assessing an individual's suitability for access to classified information, however, his circumstances must be examined with the protection of the national interest in mind. These decisions are a recognition of the heightened risks associated with Applicant's close ties of affection for persons who reside in a country known to exploit those relationships to the detriment of the United States. Although Applicant's circumstances are not of his own doing, the nature of China's government and its often adversarial approach to the United States sustain doubts about the suitability of granting Applicant access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant

### **Conclusion**

It is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge